

GUSTIN CORP.
H. R. CASPERSON

IBLA 83-451

Decided August 11, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 8142 through N MC 8144.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Where a mining claim was located in September 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention of Hold Mining Claim--Mining Claims: Abandonment

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location

is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCE: E. E. Gustin, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gustin Corporation and H. R. Casperson appeal the February 22, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Happy Days Nos. 5 through 7 lode mining claims, N MC 8142 through N MC 8144, abandoned and void because no notice of intention to hold the claims or evidence of assessment work was filed with BLM in 1978 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located in September 1977, and were recorded with BLM October 13, 1977. The claims are situated in secs. 25 and 36, T. 42 N., R. 31 E., and secs. 30 and 31, T. 42 N., R. 32 E., Mount Diablo meridian, Humboldt County, Nevada.

Appellants state that they thought the 1978 proof of labor had been filed with BLM after it was recorded in Humboldt County.

The claims in question were declared abandoned and void by BLM on August 25, 1981, because proof of labor "was not received by this office by December 30, 1978, and 1980." On September 4, 1981, H. R. Casperson filed with BLM a copy of a proof of labor covering these claims, showing receipt by BLM on August 8, 1980, and a copy of a proof of labor for these claims reflecting that it had been recorded in Humboldt County, Nevada, on July 24, 1978. This copy bore no BLM date stamp, but Casperson stated in a cover letter:

The one for July 1978 that isn't stamped is like one which was sent you at that time. I feel sure that I have one you sent back stamped somewhere here. I'll have to hunt around for it like this one for August 8, 1980. I'm sure I have one some place. Please advise me what to do.

On October 14, 1981, BLM issued a decision vacating its August 25, 1981, decision, stating:

Our decision of August 25, 1981, which declared your mining claims abandoned and void is hereby vacated. Furthermore, the filing for recordation of the above identified mining claims is reinstated and meets the requirements of 43 CFR 3833.

The decision of August 25, 1981, stated that your Notice of Intent or Proof of Labor was not received in a timely manner. Further examination of the case file shows that you did in fact

file your Evidence of Assessment Work within the time limits set forth in 43 CFR 3833. Therefore, the decision of August 25, 1981, is vacated.

BLM has now again declared the claims abandoned and void for failure to file a copy of the 1978 proof of labor before December 31, 1978. The records given to the Board contain no proof of labor or notice of intention to hold these claims which bears a filing date with BLM of December 30, 1978, or earlier. The record shows a 1978 proof of labor, recorded in Humboldt County, Nevada, July 24, 1978, and bearing a BLM date stamp of May 31, 1979.

In the absence of a stamped copy of the 1978 proof of labor showing it was filed with BLM before December 31, 1978, the BLM decision of February 22, 1983, must stand, and the BLM decision of October 14, 1981, must be held to be erroneous to the extent it conveyed the impression that timely filing of the proof of labor had been filed with BLM in 1978. 43 CFR 1810.3(c) provides: "Reliance upon information or opinion of any officer, agent, or employee or on records maintained by land offices cannot operate to vest any right not authorized by law:"

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on public land after October 21, 1976, file a copy of the recorded location notice in the proper office of BLM within 90 days after location. In addition, prior to December 31 of each year following the calendar year in which the claim was located, the owner must file for record in the county office where the notice of location is of record and in the proper office of BLM evidence of assessment work or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Homestake Mining Co., 73 IBLA 117 (1983); Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, 63 IBLA 235 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As the claims herein were located in September 1977, a proof of labor or a notice of intention to hold the claims was required to be recorded both in the records of Humboldt County, Nevada, and with BLM prior to December 31, 1978. Since no timely filing was made with BLM, the claims were properly deemed to be abandoned.

[2] The mining law does not require performance of assessment work until the assessment year commencing at noon of September 1 first succeeding the date of location of the claim, 30 U.S.C. § 28 (1976), so appellants were not required to perform assessment work until sometime during the year running from September 1, 1978, to September 1, 1979. However, this does not obviate the necessity for compliance with section 314 of FLPMA, requiring

either an affidavit of assessment work performed or a notice of intention to hold the claim to be filed both with the local recording office and with BLM on or before December 30, 1978, since 1978 was the year following the calendar year in which the claims were located. Cletius G. Rogers, 73 IBLA 1 (1983); Evelyn Parent, *supra*; Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981).

Appellants may wish to consult with BLM as to the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

